

FREQUENTLY ASKED QUESTIONS REGARDING: QUALIFYING COVERED RETIREES FOR THE RETIREE DRUG SUBSIDY

Introduction

Pursuant to §1860D-22 of the Social Security Act, effective January 1, 2006, sponsors of qualified retiree prescription drug plans become eligible for subsidy payments for each qualifying covered retiree under the plan. This document addresses several frequently asked questions about the definition of qualifying covered retiree including how the rules apply to spouses and dependents and to individuals eligible for Medicare coverage due to disability or end stage renal disease.

Background

In general, 42 CFR §423.882 defines a qualifying covered retiree as a Part D eligible individual who is not enrolled in a Medicare Part D plan but who is covered (as the participant, or as the participant's spouse or dependent) by employment-based retiree health coverage that meets the standards in 42 CFR §423.884 to be considered a qualified retiree prescription drug plan. (42 CFR §423.884 addresses application and actuarial attestation requirements.)

A Part D eligible individual is an individual who meets standards in 42 CFR §423.30(a). Generally, they require that the individual be entitled to (i.e., receiving) Medicare benefits under Medicare Part A or enrolled in Medicare Part B, and live in the service area of a Medicare Part D plan. For more information about who is a Part D eligible individual, see CMS Guidance on Creditable Coverage at http://www.cms.hhs.gov/CreditableCoverage/01_Overview.asp.

A person is covered under employment-based retiree health coverage if the coverage is under a group health plan and based on an individual's status as a retired participant or as the spouse or dependent of a retired participant. In general, sponsors have flexibility to determine whether an individual is a retiree, and to determine who are spouses and dependents of retirees, based on the coverage rules under the plan. However, a participant is presumed not to be covered under retiree health coverage from a sponsor if, under the Medicare Secondary Payer (MSP) rules in §411.104 and related CMS guidance, the participant is receiving health coverage based on "current employment status" from that sponsor. (The fact the participant may receive health coverage based on current employment status from a subsequent employer is irrelevant in this case.) This presumption applies whether or not the MSP rules actually apply to the sponsor (e.g., those rules do not apply if the sponsor has less than a specified number of employees).

Under 42 CFR §411.104, a participant generally is eligible for coverage by reason of current employment status if the participant has coverage because he/she is actively working. In addition, an individual who is not actively working is still considered to be receiving coverage due to current employment status in certain situations (e.g., for the

first six months of disability benefits from an employer). Sponsors should review the MSP rules for more information.

Questions Relating to Spouses and Dependents

Question 1: The group health plan of a plan sponsor (Sponsor) covers drug expenses for a participant and his/her spouse. Both the participant and the spouse are Part D eligible individuals, but only the participant is retired; the spouse is actively employed with a different employer but has drug coverage through the retired participant. Can the sponsor qualify for retiree drug subsidy payments for the spouse's allowable retiree costs?

Yes. As long as the participant is receiving retiree coverage, and the spouse's coverage with the sponsor is not due to his/her current employment status with Sponsor, the spouse can be a qualifying covered retiree if he/she satisfies the other standards for being a qualifying covered retiree (e.g., the spouse is a Part D eligible individual not enrolled in a Part D plan.) This rule applies regardless of the spouse's working status with respect to employers other than the sponsor. The same answer would apply with respect to dependents.

Question 2: Does the answer to Question 1 stay the same if the participant is not a Part D eligible individual?

Yes. As long as the participant is retired and receives retiree coverage, his/her spouse (or dependent) can be a qualifying covered retiree if the other requirements in the CMS regulations are satisfied (e.g., the spouse is a Part D eligible individual not enrolled in a Part D plan.). That is the case regardless of whether the participant is entitled to Medicare Part A or enrolled in Part B. It also applies even if the participant has enrolled in a Part D plan.

Question 3: Sponsor's group health plan covers prescription drugs for a participant and his/her spouse. The participant is receiving drug coverage based on current employment status with that sponsor. Can his/her spouse be a qualifying covered retiree if the spouse is retired?

No. If the participant's coverage is based on current employment status, the participant's spouse (or dependent) is not a qualifying covered retiree with respect to the coverage received from that plan. That is the case regardless of whether the spouse (or dependent) is retired from his or her employer.

The following chart illustrates different scenarios under which a participant's spouse or dependent (and the participant) can be a qualifying covered retiree under the participant's plan.

ELIGIBILITY FOR THE SUBSIDY

	Is the individual eligible for Part D?*	Does the individual have coverage from his or her employer based on current employment status**	Then can the individual be a qualifying covered retiree
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Scenario 1			
Participant	Y	Y	N
Spouse/Dependent	Y	Y	N
Scenario 2			
Participant	Y	N	Y
Spouse/Dependent	Y	N	Y
Scenario 3			
Participant	Y	N	Y
Spouse/Dependent	Y	Y	Y
Scenario 4			
Participant	Y	Y	N
Spouse/Dependent	Y	N	N
Scenario 5			
Participant	Y	N	Y
Spouse/Dependent	N	N	N
Scenario 6			
Participant	N	N	N
Spouse/Dependent	Y	N	Y

* Assumes individual is not enrolled in a Part D plan.

**Assumes spouse or dependent's employer is not the same as the participant's employer.

Questions Relating to Individuals Who Have Medicare Based on Disability or End-Stage Renal Disease, Rather than Age

Question 4: Can a participant in an employer's prescription drug plan be a qualifying covered retiree if the participant has Medicare coverage due to disability

and is covered under the employer's "active employee" plan?

Yes. If the participant does not have coverage based on current employment status (which is typically the case with individuals entitled to Medicare based on disability), and if the other parts of the definition of qualifying covered retiree in the regulation are met (e.g., the participant is a Part D eligible individual who is not enrolled in Part D), the participant (and his/her spouse or dependent) can be a qualifying covered retiree. This is the case even if the coverage being provided to the participant is the same as the coverage provided to active workers, and that coverage generally is not available to workers who retire based on age/years of service.

Furthermore, if, for any reason, an employer has, a retired Medicare eligible individual in its active plan, the employer can collect the subsidy for that retiree, provided he/she meets the additional criteria to be a qualifying covered retiree, as long as he or she continues to be covered based on retirement and not based on current employment status.

Question 5: Can a participant who is covered by Medicare under the rules that apply to End Stage Renal Disease (ESRD) be a qualifying covered retiree, even though ESRD rules require that Medicare be the secondary payer (and the employer plan the primary payer) for 30 months?

Yes. ESRD Medicare recipients can be qualifying covered retirees in the first 30 months of eligibility even though the employer's coverage is the primary coverage for that period and Medicare is secondary, as long as the other regulatory standards relating to qualifying covered retirees are met.